

**Minutes of the
Joint meeting of the Veneta City Council & Planning Commission
March 27, 2006**

Council: Mayor T. J. Brooker, Darrell Carman, Thomas Cotter, and Marion Esty

Planning
Commission: Chairman James Eagle Eye (arrived at 5:38 p.m.) Jim Bruvold, James Dean (arrived at 5:40 p.m.),
Len Goodwin, and Lily Rees

Staff: Brian Issa, Veneta Planning Official; Margaret Boutell, Community Services Director; Ric
Ingham, City Administrator; Sheryl Hackett, City Recorder; Carrie Connelly, City Attorney; Mona
Linstrombergand, Jan Wilson, Jeneca Jones, West Lane News

1. CALL TO ORDER

The Veneta Planning Commission and Veneta City Council were called to order at 5:35 p.m.

2. JOINT PUBLIC HEARING

Deliberation on Remand by LUBA (Case No. 2005-109) for Larson's Applegate Marketplace Wetland Variance (V-5-05)

a. Staff Report (Brian Issa)

Brian explained the decision the Council and Planning Commission will be making is on the variance (V-5-05) to allow wetland filling for the proposed Applegate Marketplace Development on Jack Kelley Drive. The original decision was appealed to the Land Use Board of Appeals (LUBA). LUBA remanded the original decision to the City to more fully address the establishment of "public need" and weighing the public need against the "adverse impacts" of the development.

Brian advised the Council and Commission that their packets included the full text of the LUBA remand decision, a new proposed final order that addresses the issues remanded back to the City, and the final order dated July 2005 which was appealed to LUBA. Also included was a synopsis of LUBA's points that were provided by City Attorney Carrie Connelly and a memorandum from staff that lists the possible actions the Council and Commission can take which include; approving the variance based on information in the record and the findings prepared by staff in response to the remand, approve the variance based on findings or conditions as amended by the Council and Commission, or deny the variance and direct staff to draft specific findings to support a denial.

James Eagle Eye arrived at 5:38 p.m.

Brian advised the Council and Commission that staff recommends adoption of the revised final order.

Len Goodwin questioned the use of the word "mandatory" in the first full paragraph at the top of page 7 in the proposed final order. He said the conclusion in the findings is that the present economic market and demand are not a factor.

City Attorney Carrie Connelly said it could be excluded. It was only included because it was unknown if at some point in the future the City might want to rely on it.

Len Goodwin asked if the sentence were changed to say that it was not an element of the public need made in the present case, would that preserve the ability to consider present economic demand at a future time. In response, Carrie said yes.

James Dean arrived at 5:40 p.m.

Referencing page 9 of the proposed final order, Len Goodwin asked if there is any evidence in the record to support Mr. Perkin's statement that the wetlands on the site would score highly on several functions. He said if there is not such evidence in the record, he wanted it reflected in the findings.

Brian said Wetland Consultant Nancy Holzhauser did an assessment of the site and described the overall quality of the wetlands as moderate. She did not address the separate functions of the wetlands. Len said he wanted the findings to state that Mr. Perkins statement is not supported by other evidence in the record.

James Dean asked for clarification for the statement in the top paragraph on page 11 of the proposed final order that the wetlands on site have a moderate overall value based on the city's 1999 wetland inventory. Mr. Dean said he had understood before that the City's wetlands inventory did not place a value on wetlands, only delineated them. He asked if rather than saying moderate, it should either say "not of value" or "of high value".

Lily Rees said on page 8, the wetland methodology refers to it as having an overall score of 16 which confirms a moderate ranking.

To clarify a question by James Dean, Brian said the scores are based on a scale of 1 to 3 for each category. The nine functions have a total range of 9 to 27. The Larson wetlands had an overall score total of 16 which puts it in the middle of that range. He said the lower the score, the higher the function.

Mayor Brooker said LUBA remanded the decision back to the City for balancing of the public need vs the adverse impacts.

Carrie said LUBA summarized their findings clearly in the footnote on page 18 of the remand order. In response to a question from Mayor Brooker, she said the new final order has additional facts that explain the findings of public need vs adverse impacts more fully. Those findings can be adopted by the Council and Commission.

LUBA had three concerns about arguments that were raised on the record but not incorporated into the original findings. They agreed that balancing public need vs adverse impacts is like comparing apples to oranges. When you do that, you need to identify and then weigh them. In response to a question from Thomas Cotter,

Carrie said to do that the Council and Commission would have to give some value to each side and then balance them. She said that had not been done before. In previous City decisions that have been appealed, LUBA had summarily said there were no adverse impacts. That does not satisfy ordinance requirements.

In response to a question from Mayor Brooker, Carrie said if the revised findings are approved and not remanded back by LUBA but affirmed, it tells the City that this is the process on how to apply the code provisions for these cases in the future. The revised final order added information already in the record from acknowledged documents. She said staff feels they have followed LUBA's direction. The Council and Commission need to decide if staff made the findings requested by LUBA.

Mayor Brooker said after reading the LUBA decision and the final order, they need to determine if the issues raised by LUBA have been adequately addressed. He said the City did not reopen the record.

James Dean said he thinks there are larger questions they need to look at as a result of the recent flooding. He said page 11 talks about the wetlands being of moderate value but it also talks about the wetland functions by storing flood water. He said the flooding on Jack Kelley Drive raised some significant issues for him. He asked what would happen when the land is filled in. He said if the site is holding flood water, there will be increased flooding after the area is filled in. He said based on the new evidence of flooding on Jack Kelley Drive he felt the City would be putting itself and the developer in a bad position by moving forward.

Carrie said the record has not been reopened. The Council and Commission have to base their decision solely on the record.

MOTION: James Dean made a motion to reopen the process.

Discussion: Len Goodwin said reopening the record for new evidence is one thing. Discussing issues not on remand from LUBA is something different.

James Dean said in his mind there is new information that he did not have when the application was initially reviewed. He said that new information is important. He said he does not feel comfortable limiting the discussion to the LUBA decision.

Mayor Brooker said the Council and Commission are here to discuss the LUBA appeal by addressing public need vs adverse impacts. He said issues having to do with flooding and development of the property should be addressed later. He said during development it will be the job of the City Engineer to make sure it does not create additional flooding.

James Eagle Eye asked the staff and City Attorney if the Council

and Commission at this time can look back at the decision they previously made.

In response, Carrie said what has currently been proposed is not to change the decision, but to improve the findings that support that decision. If they want to change their minds they need to make a motion and vote on it. Currently the staff recommendation does not support a denial, it supports approval based on the revised findings and the record.

MOTION: James Dean restated his motion to reopen the record. Lily Rees seconded the motion.

Discussion: City Recorder Sheryl Hackett asked for clarification of the motion. In response, City Attorney Carrie Connelly said they could add a fourth option which would be to reopen the record and not approve the new final order.

MOTION: James Dean restated his motion again, to reopen the record and begin a new record.

Discussion: In response, Len Goodwin said he would oppose the motion. He said he feels the record is good and that they can adopt findings that are consistent with the record to grant the variance. He said he sees no reason to change their decision.

James Eagle Eye asked for direction from staff before they entertain a motion. He said he agrees with Mr. Dean that there is a flooding issue that needs to be addressed. He asked if approving the revised findings would limit their ability to go back and address that issue.

Margaret explained that the applicant's development has been approved based on findings that have already been made on the storm water issue to address the ten-year storm. Carrie clarified that the approved site plan is not part of the appeal.

James Dean said Jack Kelley Drive has been closed twice because of the flooding. In response, Mayor Brooker said the road closures were not the result of this development because the improvements have not yet been made.

Carrie said she is concerned the discussion is going over the boundaries of what they should be discussing.

Tim Brooker said to change their decision, they will need to call for a public hearing, renote, and revise the findings. James Dean said he understood a fourth possible action would be to deny the final order.

MOTION: James Dean again restated his motion to reopen the record on variance V-5-05 and not take action on the LUBA appeal. Lily Rees seconded the motion.

Discussion: James Eagle Eye said he has same concerns about what road that will take them down.

Carrie said on remand they can only discuss those issues remanded by LUBA. That limits testimony.

Mayor Brooker asked what the consequences of that action would be based on the 120-day rule. In response, Carrie said the 120-day rule is waived on remand. She said she would have to do some research on what other consequences there might be.

Attorney Jan Wilson, representing the appellant, said the City has 60-days from the date of remand to make a decision.

Carrie said the time limit would probably not give the City enough time to get expert testimony.

James Eagle Eye said the concerns he has about flooding are not easily addressed with the action they have to take tonight and he doesn't know if keeping the record open will resolve that issue.

James Dean said reopening the record will give the City an opportunity to deal with information they did not have when they made their initial decision.

James Dean asked what limitations they would have. In response, Carrie said it would be the issue that was on appeal to LUBA.

In response to a question from Darrell Carman about whether or not a denial of the variance and starting over would be the best way to deal with the issues, Carrie said they can direct staff to draft findings to support a denial on the existing record but to do that they would need sufficient evidence in the record to support a denial. She said she doesn't know if that is the case.

Len Goodwin said to reopen the record the subject of the additional evidence would be the adverse impacts, if any. He said that will be very time consuming and expensive because it would have to be documented with expert testimony. He said stormwater management is very complex and he doesn't feel it is appropriate for the City to base a major study on one specific development. He said Veneta needs to do a stormwater study but it shouldn't be limited to one specific tax lot. He said they could not do it under the time limits of a remand.

He urged the Council and Planning Commission to vote no on the

motion.

Vote: The motion failed by a vote of 3 in favor (Lily Rees, James Dean, and James Eagle Eye), 5 opposed (Mayor Brooker, Thomas Cotter, Darrell Carman, Jim Bruvold, and Len Goodwin), and 1 abstention (Marion Esty).

It was noted for the record that the decision was a joint one by the Planning Commission and Council as required by the Wetland Protection Ordinance.

Mayor Brooker asked the Council and Commission to address the remand and make a decision. The fourth option of reopening the record has been taken off the table as a result of the vote to deny that motion.

In response to a question from James Dean, Margaret Boutell said a motion to deny would require the developer to submit a new site plan. The current site plan approved by the Planning Commission allows development in the wetlands. The Council and Planning Commission would have to give staff direction by making findings to support a denial.

Len Goodwin said he went through the revised final order and looked at where additional facts from the record needed to be cited to substantiate the findings. He also looked to see if there was any evidence in the record that was not adequately stated in the findings that would support denial. He said he is prepared to vote for the variance with some minor revisions to the order.

James Dean said the way the findings are written does not give any reasons to deny the variance because the findings were not written with a denial in mind. He said by virtue of the way it is written he feels limited. He said he would like staff to present some reasons for a denial.

Darrell Carman said staff recommended approval. He said it is up to the Council and Commission to make findings for denial if that is what they want to do.

James Dean said he looks to staff to do that. In response, City Administrator Ric Ingham said the planning staff writes their findings based on the information in the record, the Land Development Ordinance, and other City codes.

In response to a question from James Dean about whether there was anything in the record that would support denial, Carrie said the guidance from LUBA was to address every negative point raised by the opponents. She said those issues have now been addressed in the revised findings. She said staff decided that the balance was in favor of granting the variance. She said LUBA did not render an opinion as to what decision they should make. They only gave guidance on how to apply the code.

Margaret said if the Council and Commission do not feel staff properly weighed the evidence, they could ask staff to weigh it differently.

Darrell Carman said one of the opponents arguments was that there was no market for what was being proposed. He said an example would be that a market analysis was not done to support the need.

MOTION: Thomas Cotter made a motion to approve the revised findings based on information in the record and with the conditions of approval as stated. Len Goodwin seconded the motion.

Discussion: Len said he still sees some problems. Items 1, 3, and 4 on page 15 that say partially mitigated. Item 3 is flood storage. He said the findings of fact on page 12 indicate the full impact of loss of flood storage will be mitigated. He said they should make it clear that item 3 will be fully and not partially mitigated. In response to a statement by Darrell Carman that a ten-year storm is not full mitigation, Len said the City recognizes a ten-year storm as it's measurement for full mitigation. Len recommended removing the word "partially" for mitigation of water quality and loss of nutrients as well. He also recommended amending the findings on page 7 to remove the word "mandatory" and add "in the present case" and to add a sentence on page 9 that the statement by Mr. Perkins is not supported by other evidence in the record.

Brian also suggested amending the findings to clarify the scoring for the value of a wetlands and that the wetlands on this side fall in the middle of that range. Carrie said the clarification should be that it is a moderately functioning wetland in terms of the entire scale, with some qualities rating high and some low.

MOTION: Thomas Cotter amended his motion to include the recommended amendments. Len Goodwin seconded the motion as amended.

Discussion: In response to a question from James Dean, Carrie said the applicant will be required to meet all of the conditions of approval to proceed. Mayor Brooker said there are conditions of approval in the site plan that will address some of the issues raised tonight. Margaret said there are conditions that require storm water conveyance for a ten-year storm. The City Engineer will need to approve those plans.

James Dean said the storm water detention pond approved by the City Engineer near his home is only functioning marginally. He said that is a concern for him.

Carrie cautioned the Council and Commission to not discuss issues beyond the application before them.

Len Goodwin said this is not the time to deal with the City's storm water issues. He said it should be addressed in the broader context of a storm water study. He said he would urge the Council to

support finding a way to get such a study accomplished.

James Eagle Eye said at some point the City needs to find a way to deal with the flooding issues. He said he hopes the engineering on this project will not cause further problems. He said he believes engineered plans have not always worked in the past. He said he does not believe Jack Kelley Drive was engineered to be under water like it was this winter.

Mayor Brooker said storm water should be addressed in a different forum. Carrie agreed that it is a broad policy discussion that needs to take place

Vote: The motion passed with a vote of 6 in favor, 2 against (James Eagle Eye and James Dean voting no) and one abstention (Lily Rees abstained)

Craig Harbison asked about the mitigation process. If the site is filled and mitigated in the Amazon Mitigation Bank, where will the mitigated water go. He said the result will be increased flooding in the surrounding area.

James Dean said the City needs to begin addressing the larger storm water issues.

3. REGION 2050

Margaret said the Veneta City Council and Veneta Planning Commission have been asked to provide feedback on the employment and population numbers in the Region 2050 document. They were provided with two charts, one with population and housing densities and the other with employment densities. A map was also provided that shows several areas for future growth of Veneta.

Margaret said the Council will be considering amendments to the Transportation System Plan at their meeting later tonight. She said all of the City's plan updates, including wastewater and water, need to be based on the Comprehensive Plan. She said they cannot adopt a population that is not a coordinated population figure. The last coordinated population came out to be less than in the Comp Plan for the year 2020. It is a hindrance to doing the wastewater and water planning based on a population that is not accurate. The City's population has increased by 8% annually over the past two years which will put the City's population past the projects by the year 2020.

Margaret said the City's last population estimate for July 2005 was 3,995. A new estimate will come out in 2006; however, she doesn't know when the coordinated population will be recalculated.

Len Goodwin said the employment densities came as a shock to him. He said he doesn't see how Veneta can survive with the same employment density as Alvadore. He said he doesn't understand how Goshen and Creswell could have such higher projections. The projections for Veneta would make it a bedroom suburb.

Mona said Region 2050 population projections are not based on historic trends and that is what Veneta may have relied on in the past. Region 2050 has been projecting

populations. She said Springfield has backed out and Cottage Grove is close to backing out. Court precedent is unclear on whether Region 2050 can be implemented without their participation. She said she has not seen a Veneta representative at the advisory meetings. She said it seems to be a moot point to have this discussion before it's decided if there will even be a regional problem solving effort.

Ric said the project has been in process for 10 years as a regional problem solving exercise. He said Veneta still supports regional problem solving but not necessarily the mandated projects placed on it by LCOG.

Ric said Len brought up some good issues. He said he thinks Veneta is going in a good direction and he would like to see the employment densities go up. How it will affect Veneta in the long run is anyone's guess.

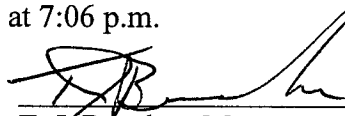
Margaret said the population projections came from community meetings that Veneta would be satellite community and was also based on the amount of land already in the City. Changing the population would require change in the density or a change in the amount of land.

Mayor Brooker agrees that the employment numbers do not reflect what they anticipate for Veneta.

Margaret reminded the Council and Commission of the joint meeting scheduled for April 10, 2006 at 5:30 meeting for making a final decision on the SWAP wetland variance.

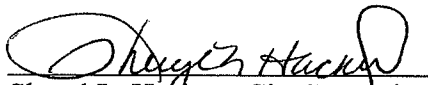
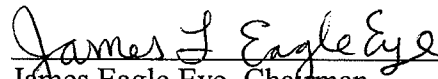
4. ADJOURN

Chairman James Eagle Eye adjourned the Veneta Planning Commission and Mayor Brooker adjourned the Veneta City Council at 7:06 p.m.

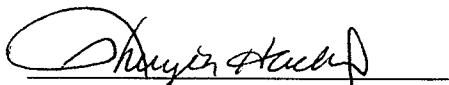


T. J. Brooker, Mayor
Veneta City Council

ATTEST:


Sheryl L. Hackett, City Recorder
(prepared by slhackett)
James Eagle Eye, Chairman
Veneta Planning Commission

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